SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/20/2002 CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES P. M. Espinoza
Deputy

CV 2002-091010

FILED: _____

INVESTOR MANAGEMENT TRUST CORP JOE D DOBBINS JR

v.

RACHEL DORR RICHARD N GROVES

REMAND DESK-SE
TEMPE JUSTICE CT-EAST

MINUTE ENTRY

This Court has jurisdiction of this Civil Appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

This case arises out of a judgment granted in Appellee's favor, concerning a special detainer action and a subsequent denial of Appellant's motion to set aside the judgment. The issue is whether the East Tempe Justice Court had personal jurisdiction over the defendant, and therefore the right to issue a default judgment. It is the contention of the Appellant that service was not effective, and that Appellant had vacated the apartment.

Rule 4.1(d) of the Arizona Rules of Civil Procedure provides that service upon individuals shall be made:

> ...by delivering a copy of the summons and of the pleading to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein….

Additionally, in a special detainer action:

> ...the tenant is deemed to have received the summons three days after the summons is mailed, if personal service is attempted, and within one day of issuance of the summons a copy of the summons is conspicuously posted on the main entrance of the tenant's residence, and on the same day the summons is sent by certified mail, return receipt requested, to the **tenant's last known address**.[1]

The 'deemed receipt of the summons' provision [of §33-1377(b)] is a proper form of substituted service which will convey *in personam* jurisdiction over a tenant, provided it is applied in a manner consistent with the constitutional requirements of due process.[2]

On appeal, a reviewing court determines whether there is evidence from which the trial court could conclude that a particular location is the person's "dwelling house or usual place of abode" based on the facts specific to that case.[3] Here, I find that there was sufficient evidence to reach such a

[1] A.R.S. §33-1377(b).
[2] Op.Atty.Gen. No. I88-008
[3] *Marks v. LaBerge*, 146 Ariz. 12, 14, 703 P.2d 559, 561 (App. 1985).

conclusion. The service of process adhered to the requirements of A.R.S. §33-1377(b), for this was Appellant's last known address.

When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.[4] All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.[5] If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.[6]

An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.[7] When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.[8] The Arizona Supreme Court has explained in ***State v. Tison***[9] that "substantial evidence" means:

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is

[4] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

[5] *Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

[6] *Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

[7] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

[8] *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

[9] SUPRA.

> directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[10]

Based on the evidence and facts specific to this case, coupled with an understanding of Arizona law, I find that service of process was proper, and therefore, the lower court had jurisdiction over Appellant and did not abuse its discretion when it denied Appellant's motion to set aside the default judgment.

IT IS THEREFORE ORDERED affirming the decision of the East Tempe Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the East Tempe Justice Court for all further, if any, and future proceedings.

[10] Id. at 553, 633 P.2d at 362.